

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. 5:13CR00560
	)	
v.	)	
	)	
ILEANA E. OSBORNE,	)	
KYLE F. CONRAD,	)	JUDGE JOHN R. ADAMS
LINDA K. CONRAD,	)	
JOHN J. DUBAY,	)	
JON R. JACOBSON,	)	
HARRY S. KAPLAN,	)	
DAVID B. ROMSEY, and	)	
GRACE M. WOLLERMAN	)	
	)	
Defendants.	)	
	)	

GOVERNMENT'S TRIAL BRIEF

Pursuant to the Court's Trial Order of March 4, 2014 (Court File No. 91), the United States submits this trial brief which discusses evidentiary and other legal issues that Government anticipates may arise at trial.

I. OVERVIEW OF THE CASE

A. Charges as set forth in the Indictment

As the Court is aware, defendant Osborne pleaded guilty to all the charges in the indictment on June 17, 2004. Accordingly, the government will limit its presentation of charges to the remaining defendants.

1. The Indictment charges Defendant Kyle F. Conrad with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 22: 18 U.S.C. § 1344 and 2 (Bank Fraud)

2. The Indictment charges Defendant Linda K. Conrad with the following offenses:

Count 1: 18 U.S.C. § 371 (Conspiracy to Commit Bank Fraud)

Count 17: 18 U.S.C. § 1344 and 2 (Bank Fraud)

3. The Indictment charges Defendant John J. Dubay with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 7: 18 U.S.C. § 1344 and 2 (Bank Fraud)

4. The Indictment charges Defendant Jon R. Jacobson with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 4, 20: 18 U.S.C. § 1344 and 2 (Bank Fraud)

5. The Indictment charges Defendant Harry S. Kaplan with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 12, 23: 18 U.S.C. § 1344 and 2 (Bank Fraud)

6. The Indictment charges Defendant David B. Romsey with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 6, 21: 18 U.S.C. § 1344 and 2 (Bank Fraud)

7. The Indictment charges Defendant Grace M. Wollerman with the following offenses:

Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Bank Fraud)

Count 18, 29: 18 U.S.C. § 1344 and 2 (Bank Fraud)

B. Government's Theory of the Case

This case involves a bank fraud conspiracy which contains and arises from substantive bank fraud charges:

General Allegations

The Defendants and Relevant Companies:

Defendant Ileana E. Osborne ("Osborne") resided and worked in the State of Florida. She was licensed by the State of Florida as a mortgage broker, and maintained offices in Florida. From in or around August 2004 through in or around July 2006, OSBORNE owned and operated a mortgage brokerage company, known as Allied First Source Mortgage, Inc. ("Allied First"), and a consulting business, known as Ocean Sands Consulting, LLC ("Osborne OSC").

Jack R. Coppenger, Jr., not charged herein, resided within the Northern District of Ohio. Coppenger owned and operated several business entities related to real estate development and management, including SMB&A, SMB&A Property Management Group, LLC, East Bay Land Holdings, Cadenhead Development, LLC, and Ocean Sands Investment Group, LLC ("Coppenger OSIG"), as well as other entities not described herein. These entities were registered with the Ohio Secretary of State. Coppenger was not licensed to practice as a real estate agent or broker in the State of Florida. In association with these entities, Coppenger owned the following Key Bank accounts in the Northern District of Ohio: 1) SMB&A, LLC, account ending in 3073; 2) Ocean Sands Investment Group account ending in 4964; 3) SMB&A Property Management account

ending in 4550; 4) Ohio Medical Consulting account ending in 4568.

Defendant Linda K. Conrad resided and worked in Stark County, Ohio, and acted as a “straw buyer” with Osborne in connection with property at Eagle’s Landing, Lot #6, described herein.

Defendant Jon R. Jacobson (“Jacobson”) resided and worked in Stark County, Ohio, and acted as a “straw buyer” with Oosborne in connection with properties at WatersEdge, Lot #57, and Ann Street, Lot #17, described herein.

Defendant Kyle F. Conrad resided and worked in Stark County, Ohio, and acted as a “straw buyer” with OSBORNE in connection with property at WatersEdge, Lot #11, described herein.

Defendant David B. Romsey (“Romsey”) resided and worked in Stark County, Ohio, and acted as a “straw buyer” with Osborne in connection with properties at WatersEdge, Lot #58, and Ann Street, Lot #14, described herein.

Defendant Grace M. Wollerman (“Wollerman”) resided and worked in Lake County, Ohio, and acted as a “straw buyer” with Osborne in connection with property at WatersEdge, Lot #23, and as a recruiter in connection with property at Eagle’s Landing, Lot #4, described herein. Wollerman further had an interest in M & G Development, an entity incorporated in the State of Ohio, and that conducted business in the Northern District of Ohio.

Defendant Harry S. Kaplan (“Kaplan”) resided and worked in Florida, and acted as a “straw buyer” with Osborne in connection with properties located at WatersEdge, Lot #12, and Eagles Landing, Lot #3, described herein.

Defendant John J. Dubay (“Dubay”) resided and worked in Florida, and acted as a “straw buyer” with Osborne in connection with property at Ann Street, Lot #9, described herein.

Financial Institutions:

First Tennessee Bank, N.A., which operated First Horizon Home Loan Corporation, with offices in the State of Texas (“First Horizon”);

National City Bank of Indiana, N.A., and National City Bank, N.A., which operated the National City Mortgage Company, and Commonwealth United Mortgage, with offices in the Northern District of Ohio and the State of Florida (collectively referred to as “National City Bank”);

Webster Bank, N.A., with offices in the State of Connecticut (“Webster Bank”); and

Coast Bank of Florida, with offices in the State of Florida (“Coast Bank”).

The Florida Properties:

The criminal conduct charged herein focused on several properties located along U.S. Route 98 in the Western Florida Panhandle, near the Gulf of Mexico, in or around Panama City and Destin, Florida. This region of Florida offered beachfront access and had numerous stretches of undeveloped and vacant lots. While these lots had potential use as vacation properties, they were generally in locations north of the highway, and thus further away from the waterfront and other amenities. The criminal conduct charged herein arose from OSBORNE, Coppenger, and others inducing the Financial Lending Institutions to make mortgage loans to the straw buyers for the purchase of these undeveloped and vacant properties, as described below.

WatersEdge was a parcel of vacant lots owned by Coppenger, and was situated north of U.S. Route 98, approximately 20 miles from the outskirts of Panama City, Florida. This parcel was located adjacent to an industrial shipping yard.

Mussett Landing, Lot #8, was an individual, vacant property owned by OSBORNE, and was located north of U.S. Route 98.

Eagle's Landing was a parcel of vacant lots owned by Eagle's Landing at Inlet Heights, LLC. This parcel was located south of U.S. Route 98.

Sandtrap was an individual, vacant property owned by S.W., D.H., and M.H., all of whom are not charged herein. This property was located south of U.S. Route 98.

Ann Street was a parcel of vacant lots owned by Galey Acquisitions. This parcel was located north of U.S. Route 98.

Serendipity Point and Osprey Cove were individual, vacant properties owned by Galey Acquisitions. Serendipity Point was located south of U.S. Route 98, and Osprey Cove was located north of U.S. Route 98.

Turquoise Beach was an individual, vacant property owned by J.M., not charged herein, and was located north of U.S. Route 98.

5610 Highway 2297 was an individual, vacant property purchased by Stanley Beekman, not charged herein, and was located north of U.S. Route 98.

Mortgage Lending Generally:

Mortgage loans were loans funded by the Financial Institution Lenders to enable prospective homeowners to finance the purchase of real estate. To apply for a mortgage loan, purchasers/borrowers typically filled out several forms, including a Uniform Residential Loan Application ("URLA"). Financial Institution Lenders evaluated and relied upon the financial representations made in the URLAs, and other supporting documents, establishing the purchaser/borrower's assets, liabilities, income, credit ratings, and down payments made on the property, in making a decision whether to loan a particular purchaser money for a mortgage. Financial Institution Lenders also evaluated and relied upon the representations in the URLAs and other supporting documents that established a prospective buyer's employment, whether that buyer

intended to use the mortgaged property as a primary residence, a secondary residence, or as an investment property, and whether the purchaser themselves would actually reside in the property. Additionally, Financial Institution Lenders reviewed and relied upon property appraisals and other documents submitted with the URLAs in assessing the value of the real estate that secured the mortgage loan.

When a purchaser found a property he or she intended to acquire, the purchaser typically applied for a mortgage loan through a mortgage broker. Generally, mortgage brokers were third parties who acted as intermediaries between a borrower and the Financial Institution Lenders. Through this process, the borrower/purchaser would select a lender that suited that borrower's financial needs and ability to repay the mortgage loan. Typically, mortgage brokers were responsible for collecting information from the buyer, including URLAs and other supporting documents, in support of the mortgage loan. Additionally, the mortgage broker interviewed the purchaser/borrower and obtained and verified all pertinent data, including the borrower's name, date of birth, social security number, home address, stated monthly income, employer information, assets, liabilities, and rental income, from the prospective buyer, and transmitted this information to the Financial Institution Lender, often by means of wire communications. The State of Florida required mortgage brokers to be licensed by the Florida Office of Financial Regulation.

Real estate appraisers were responsible for determining the fair market value of real estate properties. Financial Institution Lenders, buyers, and sellers relied upon appraisals to ensure that the suggested price of the property fairly and accurately reflected the true price of the property in a competitive and open market under all conditions requisite to a fair sale.

In assessing the viability of a residential loan application, Financial Institution Lenders engaged in a process known as "underwriting." Typically, this process involved analyzing a

borrower's credit, capacity, and collateral, as described below:

"Credit" referred to information the lender used to determine how well a borrower handled his or her current and prior debts, and also the probability that a loan would go into default.

"Capacity" referred to the borrower's ability to make payments on the loan, and included variables such as the borrower's current employment, stated monthly income, assets, and debts. A borrower's assets included that borrower's liquid assets, as supported by bank statements, and also the amount of money available on hand after closing costs, which were known as "reserves." Furthermore, a lender's assessment of a borrower's capacity included an analysis of the down payment amount the borrower could bring to the sale, and whether the borrower or a third party was the actual source of the down payment.

"Collateral" referred to the type of property that was used to secure the mortgage loan. Financial Institution Lenders considered whether the collateral property was a single-family or multi-family residence, and whether the borrower intended to occupy the property as either a primary or secondary home, or use it as an investment. Owner-occupied and secondary residences posed lower risks, and investment properties had greater chances of default. A lender's review of collateral also assessed the relationship between the amount of the mortgage loan and the value of the property, known as the loan-to-value ratio ("LTV"). A lower LTV, which could be achieved by submitting a large down payment in order to reduce the amount of money borrowed to purchase the home, was less likely to default.

While considering the factors listed above, Financial Institution Lenders set separate standards of scrutiny for underwriting loans based on the borrower's stated use and purpose for the property. A purchaser seeking to finance a mortgage for a primary residence faced more lenient requirements on the amount of down payment required at closing (resulting in a higher LTV), had

to demonstrate lower cash reserves, and received lower interest rates on their loans, as compared to an individual purchasing a second residence. Furthermore, an individual purchasing an investment property who did not intend to occupy the property faced more stringent standards and requirements than owner-occupying applicants, including: greater scrutiny of the source of their down payments; greater requirements for cash reserves; higher down payments, resulting in lower LTV ratios; restrictions on the numbers of properties they could purchase as investment properties; and requirements to produce evidence demonstrating the investment purchaser's previous creditworthy experience in owning multiple properties or managing investment properties. Residential loans for investment properties that were not occupied by the borrowers also carried higher interest rates to reflect the riskier proposition they posed to the lenders.

In the State of Florida, the mortgage loan was finalized, or closed, at a title company affiliated with an attorney's office. However, in most instances charged herein, the buyers executed the loan documents within the Northern District of Ohio, and the loans were later disbursed through the title company in the State of Florida. The title company's officers were responsible for depositing monetary instruments and funds provided by the buyer, including that buyer's down payments, along with mortgage funds from the Financial Institution Lender, or an entity acting on its behalf, into an escrow account under the control of the title company. The title company was then authorized by the seller, buyer, and the Financial Institution Lender, to disburse the funds from the escrow accounts through wire transfers and checks to various individuals and entities in accordance with the U.S. Department of Housing and Urban Development Settlement Statement ("HUD-1"). The HUD-1 detailed the actual disbursement of monies from the transaction of property, including any mortgage loan funds from the Financial Institution Lender and down payments supplied by the buyer, to the proper individuals and entities as detailed in the

original loan application, generally with a large portion of the funds being distributed to the seller of the property.

Straw Buyer Schemes Generally:

A “straw buyer” was an individual who, usually for compensation and/or some other promised benefit, signed mortgage loan documents, including URLAs, so as to conceal from the Financial Institution Lender the fact that someone else would be the true owner of the property, would make the down payments, and would make the mortgage payments, all to induce approval of the loan. “Straw buyers,” were often individuals who possessed good or excellent credit ratings, and possessed or purported to possess other qualities, including stable and sizable incomes, significant assets and limited liabilities, and who made, or purported to make substantial down payments. Defendants knew these qualities, true or not, were relied upon by the Financial Institution Lenders in their decision to issue mortgage loan funds to a particular “straw buyer,” who was, in fact, posing as a front for the true purchaser of the property, usually a person with poor credit or no intention or ability to pay back the mortgage loan and who would not otherwise qualify or be approved for a mortgage loan from the Financial Institution Lender. These “straw buyers” had no intention of making mortgage payments, using their own monies for down payments, or living in the properties being purchased, even though they signed URLAs and mortgage notes indicating otherwise.

The Conspiracy:

From August 2004, through July 2006, in the Northern District of Ohio, Eastern Division, and elsewhere, Defendants Osborne, Linda K. Conrad, Kyle F. Conrad, Jacobson, Romsey, Wollerman, Kaplan, Dubay and Jack R. Coppenger, Jr., knowingly and intentionally did conspire to violate the laws of the United States, to wit: knowingly executing a scheme to defraud a

financial institution by means of false and fraudulent pretenses, representations and promises in violation of Title 18, United States Code, Section 1344.

The Objects of the Conspiracy:

The objects of the conspiracy were to enrich Defendants Osborne, Linda K. Conrad, Kyle F. Conrad, Jacobson, Romsey, Wollerman, Kaplan, Dubay and Jack R. Coppenger, Jr., and others, by: 1) using straw buyers to make mortgage loan applications; 2) making false statements, misrepresentations, and material omissions in the mortgage loan applications and related documents; and 3) concealing the scheme to avert detection from the Financial Institution Lenders, other parties, and law enforcement.

General Conduct:

At Osborne and Coppenger's request, a real estate agent or property finder located a property for sale. Osborne, Coppenger, and others, convinced the property owner to allow Osborne, Coppenger, and others to assist in the sale and purchase of the property for a certain price satisfactory to the seller. In certain instances herein, Osborne and Coppenger, along with a relative or an entity they controlled, owned the subject property.

Coppenger located a straw buyer who had good credit, and solicited his or her participation in the fraudulent scheme by promising that Osborne and Coppenger would use the straw buyer's name and credit to purchase the property in exchange for compensation payments to the straw buyer of as much as approximately \$25,000 per real estate transaction.

In certain instances where the property was owned by a third party, Osborne, the straw buyer, Coppenger, and others, agreed to an actual sales price of the property in excess of the price requested by the seller, often hundreds of thousands of dollars in excess of the seller's asking price, and divided that excess amount between Osborne and Coppenger, their respective companies, and

others.

Generally, Coppenger represented to the straw buyer that his or her credit information was needed only to make the initial purchase of the property, and that once purchased, the straw buyer would not be responsible for payments on the mortgage loan. However, Coppenger usually promised the straw buyer a split of future profits from the investment in and development of the property.

In most circumstances, Osborne, as a licensed mortgage broker, along with the straw buyer, filled out a loan application for the straw buyer. The straw buyer knew that the loan application was to be used to qualify for a loan from a Financial Institution Lender.

Osborne, often with the assistance of the straw buyer, falsified and failed to disclose material information on the loan application in order to ensure that the straw buyer would qualify for a mortgage loan. The false and undisclosed material information included one or more of the following:

- a. Inflating income amounts;
- b. Falsely representing that the property to be purchased would be used as a second residence instead of as an investment property;
- c. Failing to disclose that the straw buyer was not in fact the source of the down payment for the purchased property;
- d. Falsifying information about bank account balances and/or bank account numbers, and in some instances, claiming that the straw buyer owned accounts that, in fact, belonged to Jack Coppenger;
- e. Failing to list Osborne's and Coppenger's involvement in: 1) paying the mortgage loans; 2) their roles as co-borrowers on the loans; 3) their roles in reimbursing the straw buyers for the payments of the mortgage loans; and 4) that Coppenger paid, and promised to pay, the straw buyer as compensation for serving as a straw buyer on the property transaction.

- f. Falsely stating that the co-defendant straw buyers intended to personally take responsibility for and pay back the mortgage loans;
- g. Falsely omitting existing liabilities or ownership of another property within the prior three years, including the failure to disclose mortgage loans brokered by Osborne on other properties purchased by the co-defendant straw buyers only months prior to the new purchase;

Osborne provided the loan application to the co-defendant straw buyer to execute despite knowing that material representations contained therein were false. The co-defendant straw buyer signed the loan application knowing that material representations contained therein were false, or left the loan application, or portions thereof, blank for Osborne to complete with false information.

Prior to closing of certain transactions Osborne purchased an official check, using her own funds while naming the straw buyer as the remitter, and forwarded that check as down payment to the title company on the straw buyer's behalf despite the fact that the documentation for the purchase of the property – specifically the HUD-1 form – identified the straw buyer as the sole source of the down payment. In all such instances, Osborne was repaid through loan proceeds after closing.

Prior to certain closings, Osborne submitted a list of properties to Coppenger, who then sent a check to the title company for use as “Earnest Monies” on those properties. In some instances, Osborne and Coppenger arranged for the earnest money to be provided on properties prior to arranging for straw buyers to “purchase” those properties.

Prior to most of the closings, Osborne prepared and caused to be prepared, and submitted and caused to be submitted, to the closing agent the HUD-1 form and other closing documents and instructions. These forms and instructions contained false material representations in that they falsely indicated that the straw buyer was responsible for the down payment on the property, despite knowing that the down payment either did not exist, or was actually made by Osborne in

the straw buyer's name.

At closing, the straw buyer signed documents, including a note and mortgage obligating him or her to make monthly mortgage payments often in excess of their true monthly income, and a HUD-1 form, and transmitted and caused to be transmitted the loan application, the sales contract, and other relevant closing documents, to the Financial Institution Lenders, all of which contained false material representations.

At closing, Osborne, as the mortgage broker, submitted and caused to be submitted the loan application containing the false material representations to the Financial Institution Lender.

In some instances, and unbeknownst to the seller, the closing occurred with the straw buyer purchasing the property from the seller at an inflated price, the Financial Institution Lender funding the inflated sale, and the title company attorney and escrow agent then providing the funds in excess of the seller's true asking price to Osborne, Coppenger, and others not charged herein.

Following most closings, Coppenger sent compensation checks to the straw buyers for as much as approximately \$25,000 per property the straw buyer "purchased." Additionally, Coppenger sent additional compensation checks to some of the straw buyers for recruiting others to function as new straw buyers.

Generally, after the transaction closed, Osborne and Coppenger made initial payments on the mortgage loans. In these cases, Osborne and Coppenger later failed to continue making mortgage payments, causing defaults and foreclosures.

In most transactions, the proceeds of the scheme were distributed as follows:

- a. Osborne and Coppenger derived proceeds from the inflated value of the property less the seller's asking price and less any nominal payments to real estate agents, property appraisers, title company attorneys and escrow officers, and the straw buyers.

- b. Additionally, Osborne, as the mortgage broker on these transactions, received an additional broker's fee consisting of a percentage of the value of each mortgage loan that was funded by the Financial Institution Lenders.
- c. Certain defendants enriched themselves at the closing of the loans by claiming fees for "services," to be made payable directly to them individually and to entities they controlled when minimal or no service had been provided.
- d. The straw buyer received compensation payments directly from Coppenger following the successful funding of a mortgage loan.

Through their schemes, Defendants obtained numerous home mortgage loans with a total face value of over approximately \$40 million. Many of these loans were in default and/or foreclosure at the time this indictment was filed.

Specific Properties:

The defendants listed below applied for home mortgage loans from the Financial Institution Lenders identified below to fund the purchases of the following properties (in chronological order by parcel):

ANN STREET

Date of Closing	Parcel	Lot	City and State	Defendants and Straw Buyers
12/15/04	Ann Street	17	Santa Rosa, Florida	OSBORNE, JON R. JACOBSON, Coppenger
12/21/04	Ann Street	14	Santa Rosa, Florida	OSBORNE, DAVID B. ROMSEY, Coppenger
12/31/04	Ann Street	9	Santa Rosa, Florida	OSBORNE, JOHN J. DUBAY, Coppenger

Lot #17, Ann Street (Defendants Osborne, Jacobson, Coppenger)

From September 6, 2004, through December 15, 2004, in a transaction involving a property owned by a third party, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Jacobson, and seller Galey Acquisitions.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Jacobson's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Jacobson had a monthly income of approximately \$19,750; a false representation that Jacobson possessed approximately \$211,515 in a First Merit Bank account ending in 3073 that did not in fact belong to him; a false statement that Jacobson intended to use the property as a "Second Residence," instead of as an investment property; and a false representation that Jacobson would be the individual making payments on the mortgage loan.

Osborne submitted and caused to be submitted a completed loan application for Jacobson containing the above false and misleading information to National City Bank in the Northern District of Ohio.

On October 8, 2004, Osborne sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio instructing him to provide approximately \$2,500 in earnest money for the Jacobson property transaction.

On October 14, 2004, Coppenger sent a check containing earnest money for the Jacobson property transaction to the title closing company in the State of Florida.

On December 15, 2004, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that approximately \$56,140 from the closing would be

delivered to the real estate broker, “Marker 1 Realty Group,” when, in fact, approximately \$34,000 of those funds were diverted to Coppenger’s OSIG Key Bank account in the Northern District of Ohio, even though Coppenger was not a licensed real estate broker in the State of Florida.

On December 20, 2004, straw buyer Jacobson sent an instruction to the title closing company to wire any remaining funds owed to Jacobson from the property transaction to the Coppenger OSIG Key Bank account in the Northern District of Ohio.

Osborne, straw buyer Jacobson, and Coppenger, received the following payments: 1) on or about December 20, 2004, Osborne’s mortgage broker company, Allied First, received approximately \$20,400 as an “origination fee,” after the loan was funded; 2) on or about December 20, 2004, Coppenger’s OSIG Key Bank account in the Northern District of Ohio received approximately \$34,000 as proceeds diverted from the real estate brokerage fee from the loan; 3) on or about January 7, 2005, Coppenger sent a \$7,500 compensation check to straw buyer Jacobson in the Northern District of Ohio.

Lot #14, Ann Street (Defendants Osborne, Romsey, Coppenger):

From September 3, 2004, through December 21, 2004, in a transaction involving a property owned by a third party, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Romsey and seller Galey Acquisitions.

Osborne, using Allied First, prepared and caused to be prepared, a loan application that contained false and misleading information regarding Romsey’s capacity to incur a mortgage obligation, including: an inflated income statement claiming that Romsey had a monthly income of approximately \$26,571; a false statement claiming Romsey was the owner of Key Bank accounts ending in 3073 and 0568 when, in fact, he was not the owner of those accounts; a false

statement that Romsey intended to use the property as a “Second Residence,” rather than as an investment property; and a false statement that Romsey would be the individual making payments on the mortgage loan.

Osborne submitted and caused to be submitted a completed loan application for Romsey containing the above false and misleading information, to National City Bank in the Northern District of Ohio.

On October 8, 2004, Osborne sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio, instructing him to provide approximately \$2,500 in earnest money for Romsey’s property transaction.

On October 14, 2004, Coppenger sent a check containing earnest money for Romsey’s property transaction to the title closing company.

On December 21, 2004, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that approximately \$56,140 from the closing would be delivered to the real estate broker, “Marker 1 Realty Group,” when, in fact, approximately \$34,000 of those funds were diverted to Coppenger’s Oceans Sands account at Key Bank, even though Coppenger was not a licensed real estate broker in the State of Florida.

Osborne, straw buyer Romsey, and Coppenger received the following payments: 1) on December 27, 2004, Osborne’s mortgage broker company, Allied First, received approximately \$20,400 as an “origination fee,” after the loan was funded; 2) on December 27, 2004, Coppenger’s OSIG Key Bank account in the Northern District of Ohio received approximately \$34,000 as proceeds diverted from the real estate brokerage fee from the loan; 3) on December 22, 2004, Coppenger sent a compensation payment of approximately \$7,500 to Romsey in the Northern

District of Ohio.

On December 22, 2004, Coppenger sent an additional payment of approximately \$2,500 to Romsey as a “referral payment” for the transaction concerning Ann Street, Lot #13, described above.

Lot #9, Ann Street (Defendants Osborne, John J. Dubay, Coppenger):

From September 8, 2004, through December 31, 2004, in a transaction involving a property owned by a third party, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Dubay, and seller Galey Acquisitions.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Dubay’s capacity to incur a mortgage obligation, including: an inflated income statement claiming that Dubay had a monthly income of approximately \$24,689; a false statement that Dubay possessed approximately \$115,671 in a Key Bank account ending in 3073 that did not in fact belong to him; a false statement that Dubay intended to use the property as a “Second Residence,” rather than as an investment property; and a false statement that Dubay would be the individual making payments on the mortgage loan.

Osborne submitted and caused to be submitted a completed loan application for Dubay containing the above false and misleading information to National City Bank.

On October 8, 2004, Osborne sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio instructing him to provide approximately \$2,500 in earnest money for the Dubay property transaction.

On October 14, 2004, Coppenger sent a check containing earnest money for the Dubay property transaction to the title closing company in the State of Florida.

On December 31, 2004, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that approximately \$147,441 from the closing would be delivered to Galey Acquisitions, when, in fact, Galey Acquisitions only received approximately \$57,441 from the transaction. The HUD-1 also contained a false statement that approximately \$56,140 from the closing would be delivered to the real estate broker, "Marker 1 Realty Group," when, in fact, approximately \$34,000 of those funds were diverted to Coppenger's Oceans Sands account at Key Bank, even though Coppenger was not a licensed real estate broker in the State of Florida.

On January 4, 2005, Osborne sent and caused to be sent by facsimile an instruction to the title closing company to divert funds from the closing of the Dubai property transaction from the seller to her own account.

Osborne, straw buyer Dubai, and Coppenger, received the following payments: 1) on January 3, 2005, Osborne's mortgage broker company, Allied First, received approximately \$20,400 as an "origination fee," after the loan was funded; 2) on January 4, 2005, Osborne's OSC account received approximately \$45,000 diverted from the seller; 3) on January 3, 2005, Coppenger's OSIG Key Bank account in the Northern District of Ohio received approximately \$34,000 as proceeds diverted from the real estate brokerage fee from the loan; 4) on January 5, 2005, Coppenger sent a compensation check of approximately \$7,500 to straw buyer Dubai in the Northern District of Ohio.

EAGLE'S LANDING

Date of Closing	Parcel	Lot	City and State	Defendants and Straw Buyers
5/03/2005	Eagle's Landing	3	Panama City Beach, Florida	Osborne, Harry S. Kaplan, Coppenger
5/18/2005	Eagle's Landing	6	Panama City Beach, Florida	Osborne, Linda K. Conrad, Coppenger
7/29/2005	Eagle's Landing	4	Panama City Beach, Florida	Osborne, Susinskas, Coppenger, Wollerman

Lot #3, Eagle's Landing (Defendant Osborne, Harry S. Kaplan, Coppenger)

On October 8, 2004, Osborne, using Allied First, sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio instructing him to provide approximately \$4,444.44 in earnest money for a property transaction concerning Eagle's Landing, Lot #3, although no individual had entered into a sales agreement for that property.

On October 14, 2004, Coppenger sent a check containing earnest money for Eagle's Landing, Lot #3 to the title closing company in the State of Florida.

From February 25, 2005, through May 3, 2005, in a transaction involving property owned by a third party, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Harry S. Kaplan and Eagle's Landing at Inlet Heights, LLC, as the seller. The sale agreement included an addendum that diverted approximately \$100,000 from the sale to Osborne's OSC interests.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Kaplan's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Kaplan had a monthly income of approximately \$568,000; a false statement that Kaplan possessed approximately \$47,000 in a Key

Bank account ending in 3073 that did not in fact belong to him; a false statement that Kaplan intended to use the property as a “Second Residence,” rather than as an investment property; a false statement that Kaplan would be the individual making payments on the mortgage loan; and a false statement that Kaplan was the source of the down payment used to secure the property.

OSBORNE submitted and caused to be submitted a completed loan application for Kaplan containing the above false and misleading information to National City Bank in the Northern District of Ohio.

Osborne submitted and caused to be submitted a falsified Citrix Systems “Verification of Employment” form purportedly signed by John J. Dubay from the State of Florida to National City Bank in the Northern District of Ohio, which had false and misleading information regarding straw buyer Kaplan.

On May 4, 2005, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Kaplan would provide approximately \$130,803.85 at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Kaplan, and Coppenger, received the following payments: 1) on May 5, 2005, Osborne’s mortgage broker company, Allied First, received approximately \$31,278 as an “origination fee,” after the loan was funded; 2) on May 5, 2005, Osborne’s OSC account received approximately \$50,000 as proceeds diverted from the seller; 3) on May 5, 2005, Coppenger’s OSIG Key Bank account in the Northern District of Ohio received approximately \$73,739.15 as proceeds diverted from the closing; 4) on May 13, 2005, Coppenger’s Cadenhead

Development, LLC, Key Bank account in the Northern District of Ohio received approximately \$28,528.50 as proceeds diverted from the closing; 5) on August 3, 2005, Coppenger sent a \$25,000 compensation check to straw buyer Kaplan.

Lot #6, Eagle's Landing (Defendant Osborne, Linda K. Conrad, Coppenger)

On October 8, 2004, Osborne, using Allied First, sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio instructing him to provide approximately \$4,444.44 in earnest money for a property transaction concerning Eagle's Landing, Lot #6, although no individual had entered into a sales agreement for that property.

On October 14, 2004, Coppenger sent a check containing earnest money for Eagle's Landing, Lot #6 to the title closing company in the State of Florida.

From February 25, 2005, through May 18, 2005, in a transaction involving property owned by a third party, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Linda K. Conrad and Eagle's Landing at Inlet Heights, LLC, as the seller. The sale agreement included an addendum that diverted approximately \$100,000 from the sale to Osborne's OSC interests.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Linda K. Conrad's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Linda K. Conrad had a monthly income of approximately \$38,111; a false statement that Linda K. Conrad possessed approximately \$175,000 in a Key Bank account ending in 4964 that did not in fact belong to her; a false statement that Linda K. Conrad intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Linda K. Conrad would be the individual

making payments on the mortgage loan; and a false statement that Linda K. Conrad was the source of the down payment used to secure the property.

Osborne submitted and caused to be submitted a completed loan application for Linda K. Conrad containing the above false and misleading information to National City Bank in the Northern District of Ohio.

On May 17, 2005, Osborne sent and caused to be sent an instruction to the title closing company to divert funds from the closing of the Linda K. Conrad property transaction from the seller to her own Osborne OSC account and to the Coppenger OSIG Key Bank account in the Northern District of Ohio.

On May 18, 2005, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Linda K. Conrad would provide approximately \$134,899.92 at the closing, when, in fact, she provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Linda K. Conrad, and Coppenger, received the following payments: 1) on May 19, 2005, Osborne's mortgage broker company, Allied First, received approximately \$31,237.50 as an "origination fee," after the loan was funded; 2) on May 19, 2005, Osborne's OSC account received approximately \$50,000 as proceeds diverted from the seller; 3) on May 19, 2005, Coppenger's OSIG Key Bank account in the Northern District of Ohio received approximately \$97,917.12 as proceeds diverted from the closing; 4) on May 25, 2005, Coppenger's Cadenhead Development, LLC, Key Bank account in the Northern District of Ohio received approximately \$33,709.50 as proceeds diverted from the closing; 5) on July 26, 2005, Coppenger sent a \$25,000

compensation check to straw buyer Linda K. Conrad in the Northern District of Ohio.

Lot #4, Eagle's Landing (Defendants Osborne, Grace M. Wollerman, Susinskas, Coppenger)

On October 8, 2004, Osborne, using Allied First, sent a facsimile from the State of Florida to Coppenger in the Northern District of Ohio instructing him to provide approximately \$4,444.44 in earnest money for a property transaction concerning Eagle's Landing, Lot #4, although no individual had entered into a sales agreement for that property.

On October 14, 2004, Coppenger sent a check containing earnest money for Eagle's Landing, Lot #4 to the title closing company in the State of Florida.

From March 2, 2005, through August 1, 2005, in a transaction involving property owned by a third party, described above, Osborne, Grace M. Wollerman, and Coppenger arranged and negotiated a contract for sale between straw buyer Albert Susinskas, not charged herein, and Eagle's Landing at Inlet Heights, LLC, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Susinskas' capacity to incur a mortgage obligation, including: an inflated income statement claiming that Susinskas had a monthly income of approximately \$41,400; a false statement that Susinskas intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Susinskas would be the individual making payments on the mortgage loan; a false statement that Susinskas was the source of the down payment used to secure the property; and failed to disclose that Susinskas had an existing liability of approximately \$1,500,000 on a separate mortgage loan arranged by Osborne on April 27, 2005, for Susinskas' purchase of OSBORNE's property at Mussett Landing, Lot #8, as described below.

Osborne submitted and caused to be submitted a completed loan application for Susinskas containing the above false and misleading information to National City Bank in the Northern District of Ohio.

From July 28, 2005, to August 1, 2005, Osborne sent and caused to be sent three facsimiles with instructions to the title closing company to divert funds from the closing of the Susinskas Eagle's Landing property transaction from the seller to her own Osborne OSC account and to the Coppenger OSIG Key Bank account in the Northern District of Ohio.

On August 4, 2005, Coppenger sent and caused to be sent a fax from the Northern District of Ohio to the title closing company in the State of Florida, instructing the title closing company to further divert funds from the closing of the Susinskas Eagle's Landing property transaction from the seller to "M&G Development, LLC," an entity registered in the State of Ohio, located in the Northern District of Ohio, and controlled by Wollerman.

On August 3, 2005, National City Bank provided loan proceeds from the Northern District of Ohio to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Susinskas would provide approximately \$143,677.39 at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, Wollerman, and Coppenger, received the following payments: 1) on August 4, 2005, Osborne's mortgage broker company, Allied First, received approximately \$44,960 as an "origination fee," after the loan was funded; 2) on August 4, 2005, Osborne's OSC account received approximately \$50,000 as proceeds diverted from the seller; 3) on August 4, 2005, Wollerman's M&G Developments Charter One Bank account in the Northern District of Ohio

received approximately \$89,139.21 as proceeds diverted from the closing; 4) on May 2, 2005, Coppenger sent a \$12,500 compensation payment, in advance, to Susinskas in the Northern District of Ohio.

WATERSEdge

Date of Closing	Parcel	Lot	City and State	Defendants and Straw Buyers
5/25/2005	WatersEdge	57	Panama City, Florida	Osborne, Jon R. Jacobson, Coppenger
5/31/2005	WatersEdge	58	Panama City, Florida	Osborne, David B. Romsey, Coppenger
6/07/2005	WatersEdge	11	Panama City, Florida	Osborne, Kyle F. Conrad, Coppenger
6/17/2005	WatersEdge	12	Panama City, Florida	Osborne, Harry S. Kaplan, Coppenger
7/19/2005	WatersEdge	23	Panama City, Florida	Osborne, Grace M. Wollerman, Coppenger

WatersEdge, Lot #57 (Defendants Osborne, Jon R. Jacobson, Coppenger)

From February 15, 2005, through May 25, 2005, in a transaction involving property owned by Coppenger, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Jon R. Jacobson, and Coppenger, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Jacobson's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Jacobson had a monthly income of approximately \$39,560; a false statement that Jacobson possessed OVER approximately \$243,000 in a Key Bank account ending in 3073 that did not in fact belong to him; a false statement

that Jacobson possessed over approximately \$160,000 in a Key Bank account ending in 4550 that did not in fact belong to him; a false statement that Jacobson intended to use the property as a “Second Residence,” rather than as an investment property; a false statement that Jacobson would be the individual making payments on the mortgage loan; a false statement that Jacobson was the source of the down payment used to secure the property; and failed to disclose that JACOBSON had an existing liability of approximately \$408,000 on a separate mortgage loan arranged by Osborne on December 15, 2004, for Jacobson’s purchase of Ann Street, Lot #17, as described above.

Osborne submitted and caused to be submitted a completed loan application for Jacobson containing the above false and misleading information to First Horizon Bank.

On May 25, 2005, straw buyer Jacobson signed and executed a promissory note obligating Jacobson to pay approximately \$243,437.49, the same amount as the purported down payment on the WatersEdge property, to Coppenger. This promissory note was secured by a mortgage on the WatersEdge property. Neither the promissory note nor the mortgage note was disclosed to First Horizon Bank.

On May 25, 2005, First Horizon Bank provided loan proceeds to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Jacobson would provide approximately \$243,437.49 at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Jacobson, and Coppenger, received the following payments: 1) on May 26, 2005, Coppenger’s Cadenhead Development, LLC, Key Bank account in the Northern District of Ohio received approximately \$65,812 from the loan proceeds; 2) on May 25, 2005,

Osborne's mortgage broker company, Allied First, received approximately \$28,245 as a "loan origination fee," and approximately \$4,010 as a "processing fee" after the loan was funded; 3) as discussed below, proceeds owed to Coppenger's East Bay Land Holdings, LLC, were commingled per Coppenger's instructions, and used in part to satisfy liens held by individuals in the Northern District of Ohio and elsewhere; 4) on May 26, 2005, Coppenger sent a \$25,000 compensation check to straw buyer Jacobson in the Northern District of Ohio.

WatersEdge, Lot #58 (Defendants Osborne, David B. Romsey, Coppenger)

From February 15, 2005, through May 31, 2005, in a transaction involving property owned by Coppenger, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer David B. Romsey, and Coppenger, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Romsey's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Romsey had a monthly income of approximately \$41,829; a false statement that Romsey possessed approximately \$161,052 in a Key Bank account ending in 0568 that did not in fact belong to him; a false statement that Romsey possessed approximately \$190,000 in a Key Bank account ending in 3073 that did not in fact belong to him; a false statement that Romsey intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Romsey would be the individual making payments on the mortgage loan; a false statement that Romsey was the source of the down payment used to secure the property; and failed to disclose that Romsey had an existing liability of approximately \$408,000 on a separate mortgage loan arranged by Osborne on December 21, 2004, for Romsey's purchase of Ann Street, Lot #14, as described above.

Osborne submitted and caused to be submitted a completed loan application for Romsey containing the above false and misleading information to First Horizon Bank.

On May 31, 2005, Coppenger sent a facsimile from the Northern District of Ohio to the title closing company in the State of Florida, instructing the title closing company to divert funds from the closing of the Romsey WatersEdge property transaction to make mortgage payments on the Ann Street properties, described above.

On May 31, 2005, Coppenger sent a facsimile from the Northern District of Ohio to the title closing company in the State of Florida, instructing the title closing company to divert funds from the proceeds of the Romsey WatersEdge property transaction to Osborne in order to pay mortgage loans on Ann Street properties.

On May 31, 2005, straw buyer ROMSEY signed and executed a promissory note obligating Romsey to pay approximately \$229,797.76, to Coppenger. This promissory note was secured by a mortgage on the WatersEdge property. Neither the promissory note nor the mortgage note was disclosed to First Horizon Bank.

On May 31, 2005, First Horizon Bank provided loan proceeds to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Romsey would provide approximately \$230,647.76, the amount of the promissory note including approximately \$850, at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Romsey, and Coppenger, received the following payments: 1) on May 31, 2005, Coppenger's Cadenhead Development, LLC, Key Bank account in the Northern District of Ohio received approximately \$65,812 from the loan proceeds; 2) on June 1, 2005,

Osborne's mortgage broker company, Allied First, received approximately \$19,256 as a "closing fee," after the loan was funded; 3) on June 2, 2005, Osborne's Allied First account received approximately \$12,999 as an "origination fee"; 4) as discussed below, proceeds owed to Coppenger's East Bay Land Holdings, LLC, were commingled per Coppenger's instructions, and used in part to satisfy liens held by individuals in the Northern District of Ohio and elsewhere; 5) on May 31, 2005, Coppenger sent a \$25,000 compensation check to straw buyer Romsey in the Northern District of Ohio.

WatersEdge, Lot #11 (Defendants Osborne, Kyle F. Conrad, Coppenger)

From February 15, 2005, through June 7, 2005, in a transaction involving property owned by Coppenger, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Kyle F. Conrad, and Coppenger, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Kyle F. Conrad's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Kyle F. Conrad had a monthly income of approximately \$41,138; a false statement that Kyle F. Conrad intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Kyle F. Conrad would be the individual making payments on the mortgage loan; and a false statement that Kyle F. Conrad was the source of the down payment used to secure the property.

Osborne submitted and caused to be submitted a completed loan application for Kyle F. Conrad containing the above false and misleading information to First Horizon Bank.

On June 7, 2005, straw buyer Kyle F. Conrad signed and executed a promissory note obligating Kyle F. Conrad to pay approximately \$227,574.35, the same amount as the purported

down payment on the WatersEdge Landing property, to Coppenger. This promissory note was secured by a mortgage on the WatersEdge property. Neither the promissory note nor the mortgage note was disclosed to First Horizon Bank.

On June 7, 2005, First Horizon Bank provided loan proceeds to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Kyle F. Conrad would provide approximately \$227,574.35 at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Kyle F. Conrad, and Coppenger, received the following payments: 1) on June 7, 2005, Osborne's mortgage broker company, Allied First, received approximately \$32,255 as a "loan origination" and "processing" fees, after the loan was funded; 2) on June 8, 2005, Coppenger's East Bay Land Holdings Key Bank account in the Northern District of Ohio received approximately \$652,741.69 as proceeds from the closing; 3) as discussed below, proceeds owed to Coppenger's East Bay Land Holdings, LLC, were commingled per Coppenger's instructions, and used in part to satisfy liens held by individuals in the Northern District of Ohio and elsewhere; 4) on June 13, 2005, Coppenger sent a \$25,000 compensation check to straw buyer Kyle F. Conrad in the Northern District of Ohio.

WatersEdge, Lot #12 (Defendants Osborne, Harry S. Kaplan, Coppenger)

From February 15, 2005, through June 17, 2005, in a transaction involving property owned by Coppenger, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Harry S. Kaplan, and Coppenger, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that

contained false and misleading information regarding Kaplan's capacity to incur a mortgage obligation, including: a false statement that Kaplan intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Kaplan would be the individual making payments on the mortgage loan; a false statement that Kaplan was the source of the down payment used to secure the property; and failed to disclose that Kaplan had an existing liability of approximately \$1,190,000 on a separate mortgage loan arranged by Osborne on May 4, 2005, for Kaplan's purchase of Eagle's Landing, Lot #3, as described above.

Osborne submitted and caused to be submitted a completed loan application for Kaplan containing the above false and misleading information to First Horizon Bank.

On June 17, 2005, straw buyer KAPLAN signed and executed a promissory note obligating Kaplan to pay approximately \$235,908.91, the same amount as the purported down payment on the WatersEdge property, to Coppenger. This promissory note was secured by a mortgage on the WatersEdge property. Neither the promissory note nor the mortgage note was disclosed to First Horizon Bank.

On June 21, 2005, First Horizon Bank provided loan proceeds to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that Kaplan would provide approximately \$235,908.91 at the closing, when, in fact, he provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Kaplan, and Coppenger, received the following payments: 1) on June 17, 2005, Osborne's mortgage broker company, Allied First, received approximately \$32,729 as a "processing" and "origination" fees; 2) on June 21, 2005, Coppenger's Cadenhead Development, LLC, Key Bank account in the Northern District of Ohio received approximately

\$150,000 from the loan proceeds; 3) on June 21, 2005, Coppenger received a check for approximately \$35,000 from the loan proceeds; 4) as discussed below, proceeds owed to Coppenger's East Bay Land Holdings, LLC, were commingled per Coppenger's instructions, and used in part to satisfy liens held by individuals in the Northern District of Ohio and elsewhere; 5) on August 24, 2005, Coppenger sent a \$25,000 compensation check to straw buyer Kaplan.

WatersEdge, Lot #23 (Defendants Osborne, Grace M. Wollerman, Coppenger)

From February 15, 2005, through July 19, 2005, in a transaction involving property owned by Coppenger, described above, Osborne and Coppenger negotiated a contract for sale between straw buyer Grace M. Wollerman, and Coppenger, as the seller.

Osborne, using Allied First, prepared and caused to be prepared a loan application that contained false and misleading information regarding Wollerman's capacity to incur a mortgage obligation, including: an inflated income statement claiming that Wollerman had a monthly income of approximately \$38,642; a false statement that Wollerman possessed approximately \$420,577 in a Key Bank account ending in 4964 that did not in fact belong to her; a false statement that Wollerman intended to use the property as a "Second Residence," rather than as an investment property; a false statement that Wollerman would be the individual making payments on the mortgage loan; and a false statement that Wollerman was the source of the down payment used to secure the property.

Osborne submitted and caused to be submitted a completed loan application for Wollerman containing the above false and misleading information to First Horizon Bank.

On July 21, 2005, First Horizon Bank provided loan proceeds to the title closing company in the State of Florida to fund the property transaction. The HUD-1 contained a false statement that

Wollerman would provide approximately \$181,495.71 at the closing, when, in fact, she provided no money toward the purchase of the property. The HUD-1 also contained inflated entries to conceal that no down payment had been made in the property transaction.

Osborne, straw buyer Wollerman, and Coppenger, received the following payments: 1) on July 19, 2005, Osborne's mortgage broker company, Allied First, received approximately \$28,523 as "origination" and "processing" fees; 2) on July 22, 2005, Coppenger's OSIG Key Bank account in the Northern District of Ohio received approximately \$129,000 as proceeds from the closing; 3) on July 22, 2005, the title closing company sent, per Coppenger's instructions, approximately \$6,012.10 from the loan proceeds to JWS Development Company; 4) on July 22, 2005, the title closing company sent approximately \$350,000 from the loan proceeds to Hartville Plumbing Corporation on Coppenger's behalf; 5) on August 10, 2005, the title closing company, per Coppenger's instructions, used approximately \$59,180.16 from the loan proceeds to pay closing costs on WatersEdge, Lot #19, on behalf of James Hirsch, as described below; 6) on July 26, 2005, Coppenger sent a \$20,000 compensation check to straw buyer Wollerman in the Northern District of Ohio.

Substantive Bank Fraud Counts

The Defendants listed blow, and others, in the Northern District of Ohio and elsewhere, unlawfully and knowingly executed and attempted to execute a scheme and artifice to defraud the financial institutions listed below and obtained money under the custody and control of said financial institutions by means of false and fraudulent pretenses, representations and promises, set forth below:

COUNT	DEFENDANT/ Straw Buyer	DATES	FINANCIAL INSTITUTION	PROPERTY
4	Osborne, Jacobson	9/06/2004 – 1/07/2005	National City Bank	Ann Street, Lot #17
6	Osborne, Romsey	9/03/2004 – 12/27/2004	National City Bank	Ann Street, Lot #14
7	Osborne, Dubai	9/08/2004 – 1/05/2005	National City Bank	Ann Street, Lot #9
12	Osborne, Kaplan	2/25/2005 – 8/03/2005	National City Bank	Eagle's Landing, Lot #3
17	Osborne, Linda K. Conrad	2/25/2005 – 7/26/2005	National City Bank	Eagle's Landing, Lot #6
18	Osborne, Wollerman, Susinskas	3/02/2005 – 8/04/2005	National City Bank	Eagle's Landing, Lot #4
20	Osborne, Jacobson	2/15/2005 – 5/27/2005	First Horizon Bank	WatersEdge, Lot #57
21	Osborne, Romsey	2/15/2005 – 6/06/2005	First Horizon Bank	WatersEdge, Lot #58
22	Osborne, Kyle F. Conrad	2/15/2005 – 6/13/2005	First Horizon Bank	WatersEdge, Lot #11
23	Osborne, Kaplan	2/15/2005 – 8/24/2005	First Horizon Bank	WatersEdge, Lot #12
29	Osborne, Wollerman	2/15/2005 – 8/10/2005	First Horizon Bank	WatersEdge, Lot #23

II. ELEMENTS OF VIOLATIONS

A. **Title 18, United States Code Section 1349 (Conspiracy)**Error! Bookmark not defined.

1. Statutory Language

The statute provides, in part:

Any person who attempts or conspires to commit any offense under is chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. . . .”

2. Elements of the Offense

- a. First, that two or more persons conspired, or agreed, to commit the crime of bank fraud, and
- b. Second, that the defendants knowingly and voluntarily joined the conspiracy;

B. Title 18, United States Code Section 1344 (Bank Fraud) & 2

1. Statutory Language:

The statute provides:

Whoever, knowingly executes, or attempts to execute, a scheme or artifice, to defraud a financial institution, or to obtain any of the money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises shall be fined not more than \$1,000,000 or imprisoned not more than 30 years or both.

2. Elements of the Offense

- a. First, that the defendants knowingly executed or attempted to execute a scheme to defraud a financial institution, to obtain money or other property owned by or in the control of a financial institution by means of false or fraudulent pretenses, representations or promises;
- b. Second, that the scheme included a material misrepresentation or concealment of a material fact;
- c. Third, that the defendants had the intent to defraud; and
- d. Fourth, that the financial institution was federally insured.

III. ANTICIPATED LEGAL ISSUES AT TRIAL

A. Government Witness Testifying Pursuant to Plea Agreement

On June 17, 2014, Ileana Osborne was charged with conspiracy to commit bank fraud and bank fraud and aiding and abetting bank fraud. (R. 1 Indictment , United States v. Ileana Osborne, et al., 5:13CR560 (N.D. Ohio December 19, 2013)). Osborne pleaded guilty pursuant to a plea

agreement (Court File No. 169). In the indictment, Osborne was charged with and pleaded guilty to participating in a conspiracy to defraud various financial institutions. The Sixth Circuit Court of Appeals has previously ruled that, “a guilty plea of a codefendant may not be received as substantive evidence of a codefendant's guilt, but may properly be considered as evidence of a witness' credibility.” United States v. Thornton, 609 F.3d 373, 377-78 (6th Cir. 2010); United States v. Christian, 786 F.2d 203, 214 (6th Cir. 1986) (*citing* United States v. Halbert, 640 F.2d 1000, 1004 (9th Cir. 1981)). Moreover, “under proper instruction, evidence of a guilty plea may be elicited by the prosecutor on direct examination so that the jury may assess the credibility of the witnesses the government asks them to believe.” *Id.* This Court has explained that a plea agreement may be interpreted as either helping or hurting a witness' credibility, so that introducing the entire agreement is appropriate to permit the jury, “to consider fully the possible conflicting motivations underlying the witness' testimony.” United States v. Tocco, 200 F.3d 401, 416 (6th Cir. 2000) (*quoting* United States v. Townsend, 796 F.2d 158, 163 (6th Cir. 1986)). In addition, “[t]he prosecutor may ... wish to place the plea before the jury so as to blunt defense efforts at impeachment and dispel the suggestion that the government or its witness has something to hide.” Christian, 786 F.2d at 214.

Osborne will testify about her role in the conspiracy. The Government intends to elicit testimony from Osborne regarding her understanding of the plea agreement and its terms on direct examination. The Government is entitled to elicit from this witness the content of her plea agreement for the purpose of allowing the jury to assess credibility. The Government, of course, acknowledges that the plea agreement is not substantive evidence of guilt of these defendants and that a limiting instruction concerning the proper use of such testimony would be appropriate, if requested by the defense.

B. Inextricably Intertwined Conduct, or *Res Gestae*, or Alternatively Rule 404(b) of the Federal Rules of Evidence

The government will seek to introduce evidence of other acts by the defendants. The arguments and authorities set forth in the government's *Motion to Deem Proposed Evidence "Inextricably Intertwined" with Charged Conduct, or Res Gestae Evidence, or Alternatively, Notice of Government's Intent to Introduce Evidence Under Rule 404(b) of the Federal Rules of Evidence* filed with the Court on May 9, 2014 (Court File No. 121) are incorporated by reference herein. The government is mindful of this Court's Order of June 18, 2014 (Court File No. 172) and intends to comply with it.

C. Hearsay Issues

1. Admissions of the Defendants - Rule 801(d)(2) of the Federal Rules of Evidence.

The Government intends to offer evidence of the defendants' out-of-court statements against them at trial. Testimony concerning these admissions is not hearsay. Rule 801 of the Federal Rules of Evidence provides, in relevant part:

Definitions:

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion

* * * *

(d) Statements which are not hearsay. A statement is not hearsay if —

* * * *

(2) Admissions by party-opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or

representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject
. . . .

Rule 801 of the Federal Rules of Evidence.

An admission has been defined as “some specific fact which tends to establish guilt or some element of the offense.” United States v. Stone, 833 F.2d 595, 601 (6th Cir. 1987).

Likewise, where a defendant adopts another’s statement through conduct, silence or otherwise, the statement is admissible against the defendant as if it were his own. Neuman v. Rivers, 125 F.3d 315, 320 (6th Cir. 1997).

2. Defendant May Not Seek to Admit His Own Out of Court Statements

While the Government is permitted to introduce a defendant’s statements against the defendant as non-hearsay admissions of a party-opponent under Rule 801(d)(2), the defendant is not permitted to introduce the defendant’s own statements under the same rule. “[D]uring direct examination, the government could have introduced inculpatory statements made by [the defendant]. The rules do not, however, provide an exception for self-serving, exculpatory statements made by a party which are being sought for admission by that same party.” United States v. Wilkerson, 84 F.3d 692, 696 (4th Cir. 1996). Although (as stated above) the statement of a defendant is not hearsay if offered against the defendant by the government, Rule 801(d)(2) of the Federal Rules of Evidence does not apply to statements of a defendant offered into evidence in his own defense. In the latter situation, the evidence is not offered against the declarant as required by Rule 801(d)(2). The courts have held that in order for a party’s statement offered through another witness to be admissible, the statement must be contrary to that party’s position at the time of trial. See Auto-Owners Insurance Co. v. Jensen, 667 F.2d 714, 722 (8th Cir. 1981);

Butler v. Southern Pacific Co., 431 F.2d 77, 80 (5th Cir. 1970); Cox v. Esso Shipping Co., 247 F.2d 629, 632 (5th Cir. 1957). In this case, the defendant may attempt to introduce his own out-of-court statements, through witnesses, in the form of summaries of interviews conducted by law enforcement officers, or through documents. Such statements are simply out of court statements offered to prove the truth of the matter asserted, and thus, constitute inadmissible hearsay.

3. Co-Conspirator Hearsay - Rule 801(d)(2) of the Federal Rules of Evidence

During the course of the trial, it is anticipated that one or more witnesses may testify that statements were made by one co-conspirator outside the presence of the defendants which incriminated the defendants. The Government respectfully submits that such statements are not hearsay and are admissible against both defendants. Rule 801 of the Federal Rules of Evidence provides in pertinent part:

Definitions:

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion

* * * *

(d) Statements which are not hearsay. A statement is not hearsay if —

* * * *

(2) Admission by party-opponent. The statement is offered against a party and is . . . (E) a statement by a coconspirator of a party during and in furtherance of the conspiracy.

Rule 801 of the Federal Rules of Evidence.

It is well established that before the government can take advantage of the co-conspirator

exception to the hearsay rule, it must show by the preponderance of the evidence (1) that a conspiracy existed; (2) that the defendant against whom the hearsay is offered was a member of the conspiracy; and (3) that the hearsay statement was made in the course of and in furtherance of the conspiracy. Bourjaily v. United States, 483 U.S. 171 (1987); United States v. Vinson, 606 F.2d 149, 152 (6th Cir. 1979). The United States Supreme Court, in Bourjaily, held that the trial court, pursuant to Rule 104 of the Federal Rules of Criminal Procedure, may make the preliminary factual determinations relevant to Rule 801(d)(2)(E) by considering all relevant evidence, unhindered by considerations of admissibility. Chief Justice Rehnquist, writing for the majority of the Court, stated:

. . . individual pieces of evidence, insufficient in themselves to prove a point, may in cumulative prove it. The sum of an evidentiary presentation may well be greater than its constituent parts . . .

We think that there is little doubt that co-conspirator's statements could themselves be probative of the existence of a conspiracy and the participation of both the defendant and the declarant in the conspiracy
. . .

. . . the judge should receive the evidence and give it such weight as his judgment and experience counsel. . . .

Bourjaily, 483 U.S. at 179-81. Therefore in the instant case, the law is clear that the Court may consider all relevant evidence when addressing the issue of admissibility of Rule 801(d)(2)(E) statements, including the co-conspirators' statements themselves.

4. Public Records and Reports - Rule 803(8) of the Federal Rules of

The Government intends to offer documents at trial which are certified public records or reports. Rule 803(8) of the Federal Rules of Evidence governs their admission:

Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * *

(8) Public records and reports. Records, reports, statements or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

Fed. R. Evid. 803(8). Specifically, the Government anticipates offering into evidence certified copies of court documents filed with governmental entities from the State of Ohio and State of Florida. These documents fall within the hearsay exception of Rule 803(8) as public records.

5. Records of Regularly Conducted Activity (Business Records) – 803(6) of the Federal Rules of Evidence

The Government intends to offer a large number of business records as evidence in this case. Business records are admissible under Rule 803(6) of the Federal Rules of Evidence, notwithstanding the hearsay rule and regardless of the availability of the declarant, as follows:

Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * *

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept

in the course of a regularly conducted business activity, if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of the information or the method or circumstances of the preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Rule 803(6) of the Federal Rules of Evidence. The business record exception to the hearsay rule is available when (1) the evidence was made in the course of a regularly conducted business activity; (2) the evidence was kept in the regular course of that business; (3) the regular practice of the business was to make the memorandum, etc., and (4) the memorandum, etc., was made by a person with knowledge or from information transmitted by a person with knowledge. United States v. Fawaz, 881 F.2d 259, 266 (6th Cir. 1989). The witness through whom the records are offered “need not be in control of or have individual knowledge of the particular corporate records . . . , but need only be familiar with the company’s record-keeping practices.” United States v. Weinstock, 153 F.3d 272, 276 (6th Cir. 1998) (*quoting In re Custodian of Records of Varsity Distrib., Inc.*, 927 F.2d 244, 248 (6th Cir. 1991)). Thus, the rule is broad enough to allow for the admission of computer-generated records if the requirements of the rule are otherwise met. Weinstock, 153 F.3d at 276.

Finally, the Eighth Circuit has addressed scenarios where a document created by a third party appears as a business record for another entity. Specifically, the Eighth Circuit held, “[s]everal other courts have held that a record created by a third party and integrated into another entity’s records is admissible as the record of the custodian’s entity, so long as the custodian entity relied upon the accuracy of the record and the other requirements of Rule 803(6) are satisfied.

Browner v. Allstate Idemnity Company, 591 F.3d 984, 987 (8th Cir. 2010) (*citing* United States v. Adefehinti, 510 F.3d 319, 325-26 (D.C. Cir. 2007); Air Land Forwarders, Inc. v. United States, 172 F.3d 1338, 1342-44 (Fed. Cir. 1999); United States v. Childs, 5 F.3d 1328, 1333-34 (9th Cir. 1993); and United States v. Duncan, 919 F.2d 981, 986-87 (5th Cir. 1990)). The Browner court announced, “[w]e agree with these courts and hold that the district court did not abuse its discretion by concluding that Allstate was not required to produce an individual from the entity that prepared the record to establish a foundation.” Id. Accordingly, the government need not present the individual who prepared a particular document when that record was integrated into custodian’s records and entity employing the custodian relied upon the record.

D. Authentication Issues

1. Authentication of Business Records – Rules 901(a) & 803(6) of the Federal Rules of Evidence

In the event that defendants’ refusal to enter into stipulations regarding financial, corporate and official records, the government will be required to authenticate the documents it intends to introduce into evidence to satisfy Rule 901(a) of the Federal Rules of Evidence. Federal Rule of Evidence 901(a) provides:

Rule 901 Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

* * *

The Sixth Circuit Court of Appeals has announced that standard demanded by Rule 901(a), “the authentication requirement of Fed.R.Evid. 901(a) ‘is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.’” (emphasis added.)

United States v. Collins, 97 Fed.Appx. 629, 2004WL1152155, unreported, (6th Cir. 2004)(quoting Fed.R.Evid. 901(a)). The *Collins* court went onto find, “[h]ere, the letters were sent by certified mail to Mark Collins, who received them and, on multiple occasions, directed his attorney to respond. Clearly, Mark Collins was a witness with knowledge, Fed.R.Evid. 901(b)(1), who was competent to testify that the letters were what they purported to be – communications from Collins attorneys to Mark Collins.” *Id.* Similarly, the Sixth Circuit has also addressed the proper authentication of business records in applying Rule 901(a). In *United States v. Batts*, 947 F.2d 946 (6th Cir. 1991)(page 2), after restating Rule 901(a), the court affirmed the trial court’s discretion in allowing Western Union money order documents into evidence:

The government has satisfied Rule 901 in this case. Jerry Edward Arrendale, chief compliance officer for Western Union Financial Services, testified that the government subpoenaed the money order documents, and that the documents were part of the business records regularly kept by the company. For authentication, Rule 901(a) does not require evidence of who wrote or sent the documents.

Therefore, *Batts* is instructive in its holding that authentication met under Rule 901(a) when a records custodian offers testimony that “business records [were] regularly kept by the company” to demonstrate what the proponent claims to documents to be.

Here, the government anticipates defendants’ objection to the authentication of executed mortgage applications under a theory that they did not sign the document. Such an argument does not undermine the government’s claim that the mortgage application is true and copy obtained from a bank’s loan file or another reliable source. As the foregoing case law demonstrates, authentication pertains to the entire document. The defendants remain free to challenge any signatures, but the whole document remains admissible upon satisfying the requirement of Rule 901(a) and 803(6) of the Federal Rules of Evidence.

2. Authentication of Handwriting - Rule 901(b)(2) of the Federal Rules of Evidence

The Government intends to offer handwriting authentication non-expert opinion testimony from a witness during its presentation of evidence, as permitted by the Federal Rules of Evidence. Rule 901(b)(2) of the Federal Rules of Evidence states:

Requirement of Authentication or Identification

(a) General provision. . . .

* * * *

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

* * * *

(2) Nonexpert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.

Rule 901(b)(2) of the Federal Rules of Evidence. See United States v. Carriger, 592 F.2d 312, 315 (6th Cir. 1979). A witness who is not an expert may identify signatures or handwriting if the witness is sufficiently familiar with the signature or handwriting. See United States v. Fields, 923 F.2d 358 (5th Cir. 1991) (settled law that expert testimony is not required to identify handwriting). A witness' knowledge of the other person's handwriting can be acquired by any means, so long as it is not obtained especially for trial. See, e.g., United States v. Pitts, 569 F.2d 343, 348 (5th Cir.1978)(familiarity acquired for purposes of pending criminal investigation does not meet 901(b)(2) standards). Under Rule 901(b)(2), if a witness testifies to being familiar with another person's handwriting, and describes a relationship or circumstances from which the familiarity has been acquired, the testimony should be permitted. See United States

v. Barker, 735 F.2d 1280, 1283-84 (11th Cir. 1984) (co-workers' testimony properly admitted);
United States v. Gallagher, 576 F.2d 1028, 1048 (3d Cir. 1978) (supervisor permitted to testify).

Business records do not require separate proof of authenticity of signature on those records.

United States v. Renfro, 600 F.2d 55 (6th Cir. 1980).

3. Authentication of Public Documents - Rules 902(1), 902(2) & 902(4) of the Federal Rules of Evidence

The Government intends to offer documents as evidence which are domestic public documents. Several evidentiary rules govern the authentication of such documents. Rule 902(1) and (2) provide for domestic public documents with or without a seal. In relevant part, those rules state:

Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States or of any State . . . or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

* * * *

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as

correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.

Rule 902(4) of the Federal Rules of Evidence.

4. Authentication of Commercial Paper - Rule 902(9) of the Federal Rules of Evidence

The Government intends to offer evidence which is self-authenticating commercial paper.

Rule 902(9) of the Federal Rules of Evidence governs the authentication of this rule:

Self-authentication

Extrinsic evidence of authenticity . . .

* * * *

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

Rule 902(9) of the Federal Rules of Evidence. United States v. Carriger, 592 F.2d 312, 316 (6th Cir. 1979). In United States v. Goichman, 547 F.2d 778 (3d Cir. 1976), the Third Circuit stated: “[o]nce a *prima facie* case (of authenticity) is made, the evidence goes to the jury and it is the jury who will ultimately determine the authenticity of the evidence, not the court. The only requirement is that there has been substantial evidence from which they could infer that the document was authentic.” Goichman, 547 F.2d at 784. Rule 902 dispenses with a requirement of extrinsic evidence for admissibility. Carriger, 592 F.2d at 316.

Pursuant to Rules 902(1), 902(2), and 902(4), in conjunction with Rule 1005 of the Federal Rules of Evidence (see below), the Government may introduce certified copies of these documents without calling a witness or establishing an independent foundation for admissibility.

5. Authentication of Business Records - Rule 902(11) of the Federal Rules of Evidence

Rule 902(11) of the Federal Rules of Evidence permits the authentication of business records with an out-of-court certification, rather than requiring the testimony of a record custodian at trial. Rule 902(11) states:

Self-authentication

Extrinsic evidence of authenticity . . .

* * * *

(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record —

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Rule 902(11) of the Federal Rules of Evidence. Federal Rule of Evidence 902(11) provides that documents that would be admissible as a business record may be authenticated without a witness “if accompanied by a written declaration of its custodian or other qualified person, in a manner

complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record--(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice.”

The Government has obtained certifications for all of its business records and has provided them to defense counsel in discovery. By providing these records well in advance of trial, the Government provided the defendants a fair opportunity to challenge them. The Government has received no objection. The Government will consult with Attorneys Johnson and Hastings to confirm that they have no objection.

6. Authentication of Emails Into Evidence

Courts have allowed e-mails to be authenticated by circumstantial evidence when an e-mail from a defendant cannot be directly authenticated through testimony. As an initial matter Rule 901(a) of the Federal Rules of Evidence provides, “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” With respect to the application of Rule 901(a), the Sixth Circuit rejected a claim that Western Union money order documents were improperly admitted into evidence due to the absence of evidence of who wrote or sent the money orders as the Western Union’s records custodian testified that the records were obtained through subpoena and kept in the ordinary course of business. United States v. Batts, 947 F.2d 946, 1991 WL 230023 (at *2)(6th Cir. 1991)(unpublished). The Sixth Circuit has also upheld the admission of a document authenticated circumstantially from the contents of

document as contemplated in Rule 901(b)(4). United States v. Jones, 107 F.3d 1147, 1150 (6th Cir. 1997). Accordingly, the Sixth Circuit has approved the circumstantial authentication of documentary evidence.

While research has been unable to obtain a Sixth Circuit case where e-mails have been authenticated circumstantially, other circuits have embraced circumstantial authentication. With respect to the circumstantial authentication of e-mails, the Eleventh Circuit has held, “[t]he government may authenticate a document solely through the use of circumstantial evidence, including the document’s own distinctive characteristics and the circumstances surrounding its discovery.” United States v. Siddiqui, 235 F.3d 1318, 1322 (11th Cir. 2000)(quoting United States v. Smith, 918 F.2d 1501, 1510 (11th Cir. 1990) and citing Hicks v. United States, 502 U.S. 849, 112 S.Ct. 151, 116 L.Ed.2d 117 (1991) and *cert denied sub nom.*, Sawyer v. United States, 502 U.S. 890, 112 S.Ct. 253, 116 L.Ed.2d 207 (1991). In Siddiqui, the Eleventh Circuit applied the provisions of Rule 901(b)(4) to affirm the district court’s admission of the defendant’s e-mails at trial based on the subject e-mails bearing defendant’s e-mail address, the content of the e-mails reflecting detailed information regarding the relevant conduct and the e-mails depicting the author in defendant’s nickname of “Mo.” Id. at 1322-1323. Other circuits have adopted and followed the Eleventh Circuit’s circumstantial approach to the authentication of e-mails.

The Eleventh Circuit’s analysis in Siddiqui regarding the circumstantial authentication of e-mails into evidence at trial has proven instructive for other courts. In United States v. Vaghari, No. 08-693-01-02, 2009 WL 2245097 (at *8)(E.D. Pa. July 27, 2009), the District Court for the Eastern District of Pennsylvania applied Rule 901(a) to permit the introduction of

e-mails based on said e-mails bearing the defendant's name and e-mail address and the fact that hard-copies were obtained from defendant's apartment. In so holding, the Vaghari court noted, "[o]ther courts have authenticated e-mails in this manner, relying on e-mail addresses in the headers, explanation in the body of the e-mails, defendant's conduct after receiving the e-mails, and other circumstantial evidence." Id. (citing United States v. Siddiqui, 235 F.3d 1318, 1322-23 (11th Cir. 2000) and United States v. Safavian, 435 F. Supp. 2d 36, 39-42 (D.D.C. 2006)). Further, the Seventh Circuit addressed e-mails which were impossible to authenticate under Rule 901(b)(1) as neither the author nor anyone who saw the author compose the e-mails testified at trial. United States v. Fluker, 698 F.3d 988, 999 (7th Cir. 2012). The Fluker court specifically relied on the e-mail addresses used, as they appeared on the subject e-mails, and the extent of the author's knowledge of the relevant events. Id., 698 F.3d at 1000. The Seventh Circuit noted the following in reference to its content based approach to circumstantial authentication, "[t]he Eleventh Circuit has found these types of factors to be sufficient to satisfy Rule 901(a)'s authentication requirements for e-mail evidence." Id. (citing United States v. Siddiqui, 235 F.3d 1318, 1322-23 (11th Cir. 2000)). Accordingly, district courts have permitted e-mails to be authenticated based on the e-mail addresses used, the content of the e-mail message demonstrating knowledge of the relevant facts, and the e-mail author's name or known nickname have been upheld on appeal.

In the present case, the government may seek to introduce e-mails among and between the defendants under the provisions of this Court's Order of June 18, 2014 (Court File No. 172). As the authentication of these e-mails is impossible due to the fact that defendants, if they testify at all, will not testify during the government's case-in-chief, the government will seek to

authenticate said e-mails circumstantially. The government submits that authentication will be established pursuant to Rule 901(b)(4) by the source of the e-mails, the e-mail addresses used, and the content of the e-mails being directly related to the charged conduct. Siddiqui. Further, any hearsay concerns regarding the content of the authenticated e-mails is alleviated as the statements in the e-mails constitute non-hearsay statements under Rule 801(d)(2) of the Federal Rules of Evidence. Therefore, the government will seek to introduce, through circumstantial authentication, the e-mails of defendants communicating with each other during the course of the conspiracies set forth in the indictment.

E. Recall of Government Witness

The government intends to call, during its case-in-chief, FBI Special Agent David O'Connor and/or FBI Special Agent Joseph McGinn as witnesses, to present evidence regarding multiple bank accounts, mortgage files, and title records which the defendants' used to facilitate their fraudulent scheme. In addition, Special Agents O'Connor and/or McGinn may present evidence regarding their investigation, documents identified as relevant to their investigation and the preparation of summary charts of financial activity. Finally, the government intends to call Special Agents O'Connor and/or McGinn as its summary witness in its case-in-chief. Courts that have considered the issue have approved recalling of witnesses. United States v. Jackson, 549 F.2d 517, 518 (8th Cir. 1977). The Eight Circuit held there was no abuse of discretion and the procedure was recommended as one way to clearly present an organized factual recital in a conspiracy trial. Id. at 529. Rule 611(a) of the Federal Rules of Evidence states that the court "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for

determining the truth; (2) avoid wasting time; . . .” By permitting the recall of Special Agent O’Connor and/or McGinn as a summary witness, this procedure will assist the jury with a logical presentation of the evidence. During the first time Special Agents O’Connor and/or McGinn testify, cross-examination should be limited to the matters addressed on direct examination. Upon recall, full cross-examination of Special Agent O’Connor and/or McGinn can be afforded after he has testified a second time.

IV. MISCELLANEOUS TRIAL MATTERS

A. Submitting the Indictment to the Jury

The Sixth Circuit has held that the trial judge has the discretion to submit the indictment to the jury in a criminal case as long as limiting instructions are given to the effect that the indictment is not to be considered as evidence of the guilt of the accused. United States v. Cooper, 577 F.2d 1079, 1089 (6th Cir. 1978) (“It was not error for the trial judge to have permitted the jury to have a written copy of the indictment, especially where, as here, the jury was fully instructed that it could not consider the indictment as evidence of the crime itself.”) Accord, United States v. Russo, 480 F.2d 1228, 1244 (6th Cir. 1973). The Government would also rely on the Sixth Circuit Pattern Jury Instructions (Criminal) §2.02 (West 2009), page 41, which provides, in pertinent part, “However, jury confusion can arise, particularly in complex cases, if the indictment is not read, accurately summarized or sent to the jury room.” *citing* United States v. Bustamonte, 1992 WL 126630 (6th Cir. 1992)(unpublished). Given the length of trial and nature of the charges involved in the case, the Government asks that the Court submit the Superseding Indictment to the jury with a limiting charge that the Superseding Indictment is not evidence of a defendant’s guilt.

B. Admissibility of Duplicates and Photocopies

Copies of reproductions or reprints are admissible to the same extent as originals whether the original is in existence or not. 28 U.S.C. § 1732(b) (Federal Business Record Act).

Therefore, such reproductions are admissible in the same manner as the originals. United States v. Carroll, 860 F.2d 500, 507 (1st Cir. 1988) (microfilm of checks is admissible); United States v. Saputski, 496 F.2d 140, 141 (9th Cir. 1974); Williams v. United States, 404 F.2d 1372, 1373 (5th Cir. 1968).

The Government intends to admit documents as evidence which are duplicates and photocopies of original documents. Rules 1001 and 1003 govern the admissibility of duplicate documents. Federal Rule of Evidence 1004 states, “[a] duplicate is admissible to the same extent as an original unless (1) genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.”

C. Computer-assisted Presentation of Evidence

To maximize efficiency, the Government intends to present evidence through the Court’s electronic presentation system, using Sanction II software. With the Court’s permission, the government intends first to have the witness identify the document to be admitted, allow a moment for counsel to voice any objection, and then publish the document to the jury.

D. Presence of Government’s Agents at Trial

The Government anticipates the Court ordering a separation of witnesses pursuant to Federal Rule of Evidence 615. The Government requests the Court to permit two representatives to remain in the courtroom throughout the trial, the first to assist the Government at counsel table and the second to remain in the courtroom gallery.

Federal Rule of Evidence 615(2) specifically excludes from the sequestration order “an

officer or employee of a party which is not a natural person designated as its representative by its attorney.” The Government anticipates designating FBI Special Agent David O’Connor, the case agent and, possibly, U.S. Attorney’s Office Auditor Laurie Boyer, who will serve as the Government’s representatives present at counsel table.

In addition to requesting O’Connor and Boyer’s presence at trial, the Government requests the Court permit Janet Goodrich, who will run the Electronic Presentation System Sanction II for the Government. Federal Rule of Evidence 615(3) provides an additional exception to the court’s sequestration order for witnesses “whose presence is shown by a party to be essential to the presentation of the party’s cause.” See United States v. Mohnney, 949 F.2d 1397, 1404-05 (6th Cir. 1991). The rule, therefore, allows the Government to designate representatives in addition to the case agent for certain prosecutions that are sufficiently complex so that “the aid of more than one law enforcement officer is needed to sort through extensive, technical evidence, and to help ‘map out strategy.’” United States v. Phibbs, 999 F.2d 1053, 1072 (6th Cir. 1993). “The ‘essential’ witness exception set out in Rule 615(3) ‘contemplates such persons as an agent who handled the transaction being litigated or an expert needed to advise counsel in the management of the litigation.’” Id. at 1073 (*quoting* Advisory Committee Notes to Fed.R.Evid. 615). Witnesses who will offer some form of expert or opinion testimony may also be deemed “essential” under Fed.R.Evid. 615. “[W]here a fair showing has been made that the expert witness is in fact required for the management of the case, and this is made clear to the trial court, we believe that the trial court is bound to accept any reasonable, substantiated representation to this effect by counsel.” United States v. Mohnney, 949 F.2d 1397, 1405 (6th Cir. 1991) (upholding trial court’s decision to exclude IRS agents from sequestration where agents offered expert testimony).

E. Use of Summary Charts to Present Voluminous Information

The Court is aware that the Indictment charges a conspiracy that spanned several years. It involved numerous individuals and properties. To present this evidence in an efficient and organized way, the Government is preparing summary charts, which will depict, among other things, payment from Coppenger, through one of the entities her controlled, to defendants to pay for their inducement for signing the mortgage and to pay the mortgages they had signed.

These summary charts are themselves admissible evidence under Federal Rule of Evidence 1006, and the Government will seek to admit them as substantive evidence, which the jury can reference during deliberations. Federal Rule of Evidence 1006 permits for such use of summary charts, by providing that “contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.” The use of summary materials has been approved by the Sixth Circuit. See United States v. Bray, 139 F.3d 1104, 1112 (6th Cir. 1998). The Government will also include in its proposed jury instructions, the Sixth Circuit’s pattern jury instruction 7.12.

The summary charts will accurately depict the evidence to be presented to the jury and will streamline the trial considerably by condensing numerous of exhibits into a handful of summary charts. For each summary chart the Government anticipates using at trial, the Government has complied with Rule 1006 by providing the underlying documents to Defendant and/or making the underlying documents available for examination and copying in advance of the Court’s discovery deadline. Furthermore, the Government will provide the charts to Defendant in advance of trial.

F. Length of Trial

The Government anticipates its case-in-chief to last approximately 7 to 8 business days subject to defense counsel's cross-examinations and willingness to enter into stipulations. The Government will submit its witness, comprised of approximately fifty (17) witnesses¹, list prior to start of the jury trial.

G. Stipulations

The Government has prepared stipulations for custodians of records and the official government records in a separate document.

H. Jury Instructions

Due to its length, the Government has prepared its proposed jury instructions as a separate document. The undersigned counsel sent the proposed jury instructions to defense counsel via email, in *.pdf file format, on Sunday, June 22, 2014 at 12:19 p.m.in compliance with this Court's Order of March 4, 2014.

¹ The Government reserves the right to add or delete witnesses as trial preparation continues. Said estimate assumes stipulations to business records, which would otherwise necessitate calling an additional witnesses and is exclusive of rebuttal witnesses.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 25th day of June 2014, a copy of the foregoing United States' Trial Brief was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

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